



AIR 2020 SUPREME COURT 100 :: 2020 Cri L J 1322 (SC)

Supreme Court Of India

HON'BLE JUDGE(S): MOHAN M. SHANTANAGOUDAR, DEEPAK GUPTA , JJ

Rekha Murarka v. State of West Bengal

CRIMINAL APPEAL - 1727 of 2019, decided on 20/11/2019

(A) Criminal P.C. (2 of 1974) , S.301, S.302, S.24(8) Proviso, S.2(wa)— (as Inserted By (amendment) Act 5 of 2009) Public prosecutor - Role to be played.

In criminal justice system, the Public Prosecutor occupies a position of great importance. Given(Para 8, 10) that crimes are treated as a wrong against the society as a whole, his role in the administration of justice is crucial, as he is not just a representative of the aggrieved person, but that of the State at large. Though he is appointed by the Government, he is not a servant of the Government or the investigating agency. He is an officer of the Court and his primary duty is to assist the Court in arriving at the truth by putting forth all the relevant material on behalf of the prosecution. While discharging these duties, he must act in a manner that is fair to the Court, to the investigating agencies, as well to the accused. This means that in instances where he finds material indicating that the accused legitimately deserves a benefit during the trial, he must not conceal it. The space carved out for the Public Prosecutor is clearly that of an independent officer who secures the cause of justice and fair play in a criminal trial. A Public Prosecutor is entrusted with the responsibility of conducting the prosecution of a case. That this is a crucial role is evident from conditions such as in S. 24(7), which stipulates a minimum legal experience of seven years for a person to be eligible to be a Public Prosecutor. It is further clear from a joint reading of S. 301 and the proviso to S. 24(8) that the two provisions are mutually complementary. There is no bar on the victim engaging a private counsel to assist the prosecution, subject to the permission of the Court. (Para 8, 10)

(B) Criminal P.C. (2 of 1974) , S.301(2), S.302, S.24(8) Proviso, S.2(wa)— (as Inserted By (amendment) Act 5 of 2009) - Public prosecutor - Words "co-ordinate with" substituted by "assist" in Amendment Bill to CrPC reflecting intention to only assign a supportive role to private counsel of victim - If some points remained to be unaddressed by Public Prosecutor in examination of witnesses private counsel can question it only through Public Prosecutor - Appellant/victim seeking permission for private counsel engage by him to cross-examine witnesses after Public Prosecutor-Cannot be granted.

Interpretation of words "under this subsection" in the proviso to S. 24(8) implies(Para 10, 11, 12.1, 12.4) that victim's counsel can only be engaged to assist a Special Public Prosecutor would go against S. 301(2), which makes the pleader instructed by a private person subject to the directions of the Public Prosecutor or the Assistant Public Prosecutor. A harmonious reading should be given to these provisions to give them full effect. No justifiable basis for applying the provision only with respect to Special Public Prosecutors. The assistance given by the victim's counsel is meant to be given to the prosecution in general. The use of the term "assist" in the proviso to S. 24(8) is crucial, and implies that the victim's counsel is only intended to have a secondary role qua the Public Prosecutor. This is supported by the fact that the original Amendment Bill to the CrPC had used the words "co-ordinate with the prosecution". However, a change was later proposed and in the finally adopted version, the words "co-ordinate with" were substituted by "assist". This change is reflective of an intention to only assign a supportive role to the victim's counsel, which would also be in consonance with the limited role envisaged for pleaders instructed by private persons under S. 301(2). Mandate that allows the victim's counsel to make oral arguments and cross-examine witnesses goes beyond a mere assistive role, and constitutes a parallel prosecution proceeding by itself. Given the primacy accorded to the Public Prosecutor in conducting a trial, as evident from S. 225 and S. 301(2), permitting such a free hand would go against the scheme envisaged under the Cr.P.C. In some instances, such a wide array of functions may also have adverse

consequences on the fairness of a trial. For instance, there may be a case where the Public Prosecutor may make a strategic call to examine some witnesses and leave out others. If the victim's counsel insists upon examining any of the left out witnesses, it is possible that the evidence so brought forth may weaken the prosecution case. If given a free hand, in some instances, the trial may even end up becoming a vindictive battle between the victim's counsel and the accused, which may further impact the safeguards put in place for the accused in criminal trials. These lapses may be aggravated by a lack of advocacy experience on the part of the victim's counsel. In contrast, such dangers would not arise in the case of a Public Prosecutor, who is required to have considerable experience in the practice of law, and act as an independent officer of the Court. Thus, it is important to appreciate why the role of a victim's counsel is made subject to the instructions of the Public Prosecutor, who occupies a prime position by virtue of the increased responsibilities shouldered by him with respect to the conduct of a criminal trial. Introduction of the proviso to S. 24(8) acts as a safety valve, inasmuch as the victim's counsel can make up for any oversights or deficiencies in the prosecution case. Further, to ensure that the right of appeal accorded to a victim under the proviso to S. 372 of the Cr.P.C. is not rendered meaningless due to the errors of the Public Prosecutor at the trial stage itself, some significant role should be given to the victim's counsel while assisting the prosecution. However, while doing so, the balance inherent in the scheme of the Cr.P.C. should not be tampered with, and the prime role accorded to the Public Prosecutor should not be diluted. Extent of assistance and the manner of giving it would depend on the facts and circumstances of each case. A victim's counsel should ordinarily not be given the right to make oral arguments or examine and cross-examine witnesses. As stated in S. 301(2), the private party's pleader is subject to the directions of the Public Prosecutor. The same principle should apply to the victim's counsel under the proviso to S. 24(8), as it adequately ensures that the interests of the victim are represented. If the victim's counsel feels that a certain aspect has gone unaddressed in the examination of the witnesses or the arguments advanced by the Public Prosecutor, he may route any questions or points through the Public Prosecutor himself. This would not only preserve the paramount position of the Public Prosecutor under the scheme of the CrPC, but also ensure that there is no inconsistency between the case advanced by the Public Prosecutor and the victim's counsel. However, even if there is a situation where the Public Prosecutor fails to highlight some issue of importance despite it having been suggested by the victim's counsel, the victim's counsel may still not be given the unbridled mantle of making oral arguments or examining witnesses. This is because in such cases, he still has a recourse by channelling his questions or arguments through the Judge first. For instance, if the victim's counsel finds that the Public Prosecutor has not examined a witness properly and not incorporated his suggestions either, he may bring certain questions to the notice of the Court. If the Judge finds merit in them, he may take action accordingly by invoking his powers under S. 311 of the CrPC or Section 165 of the Indian Evidence Act, 1872. Interpretation of statutes - Harmonious construction. (Para 10, 11, 12.1, 12.4)

Name of Advocates

1. MOHAN M. SHANTANAGOUDAR, J. :- Leave granted.
2. This appeal arises out of judgment dated 29.07.2019 passed by the Hon'ble High Court of Calcutta in revisional application C.R.R. No. 2357 of 2018, affirming the order dated 25.07.2018 passed by the Additional District and Sessions Judge, Fast Track Court, Calcutta rejecting an application filed by the Appellant herein, the de facto Complainant in Sessions Case No. 43 of 2014.
3. The brief facts giving rise to this appeal are as follows:
 - 3.1 The Appellant herein is the widow of one Gyan Prakash Murarka ("the deceased"), who is alleged to have been stabbed and murdered by Respondent No. 2 herein on 16.01.2014. The Appellant is also said to have sustained serious injuries while trying to save her husband. Bowbazar Police Station Case No. 19 of 2014 came to be registered against Respondent No. 2 and on 18.12.2015, charges were framed against him for the commission of offences punishable under Sections 302 and 326 of the Indian Penal Code, 1860. Respondent No. 2 pleaded not guilty and the trial began before the Sessions Court.
 - 3.2 While the evidence was being recorded, the Appellant sought an expeditious trial of the case vide

C.R.R. No. 833 of 2016, which was allowed on 09.03.2016. Subsequently, on 10.07.2018, she filed another application under Section 301 read with the proviso to Section 24(8) of the Code of Criminal Procedure, 1973 ("the CrPC") praying for the following reliefs:

"(a) to advance oral argument in support of question of law and fact only after the learned Public Prosecutor, if so required;

(b) to raise objection in case any irrelevant question is put to any prosecution witness, if so required; (c) to examine the prosecution witnesses only after the learned Public Prosecutor, if so required;

(d) to cross-examine the defence witnesses, if adduced, only after the learned Public Prosecutor, if so required;

(e) to assist the process of justice in accordance with law;

(f) pass such further or other order(s) and/or direction(s) as it may deem fit and proper."

3.3 Vide order dated 25.07.2018, the learned Additional District and Sessions Judge, Fast Track Court, Calcutta rejected the said prayer. This was done on the basis that the right of a victim or private individual to participate in the prosecution of a Sessions trial is restricted, and the prosecution is subject to the control of the Public Prosecutor. It was observed that Section 301 of the CrPC does not have an overriding effect over Section 225, which mandates that the prosecution be conducted by the Public Prosecutor. However, in view of Section 301(2) of the CrPC, the learned Judge gave permission to the de facto Complainant to furnish written arguments after the completion of the arguments of the prosecution.

3.4 This order was challenged before the Hon'ble High Court of Calcutta in C.R.R. No. 2357 of 2018. Vide the impugned judgment dated 29.07.2019, the High Court affirmed the order of the Sessions Judge, discussing the crucial role played by the Public Prosecutor in a Sessions trial. Alluding to Section 225 of the CrPC, it was held that the mandate therein that a Sessions trial shall be conducted by a Public Prosecutor is unequivocal and cannot be diluted by the proviso to Section 24(8), which allows the victim to engage a counsel to assist the prosecution. Drawing a distinction between assisting the prosecution and conducting it, the High Court took note of instances where allowing a free hand to the victim's counsel may hamper the prosecution's case and impact the fairness of the trial. In view of this, it was held that the request of the victim's counsel to cross examine the defence witnesses after the Public Prosecutor could not be allowed. Accordingly, C.R.R. No. 2357 of 2018 was dismissed. Hence, this appeal.

4. Learned Senior Counsel for the Appellant drew our attention to the relevant provisions in the CrPC, i.e. Sections 301 and 302, the proviso to Section 24(8) and Section 2(w)(a). He argued that these provisions should be read together, and Section 301 should not be read as a bar to Section 24(8) so as to limit the role of the victim's counsel to mere filing of written arguments. Alluding to the Report of the Malimath Committee on Reforms of Criminal Justice System, 2003 and that of the Madhav Menon Committee on Victim Orientation to Criminal Justice, 2007, he emphasized how victims had been neglected in the criminal justice system. He argued that the 2009 amendment introducing the proviso to Section 24(8) to the CrPC was made in this context, so as to account for instances where the Public Prosecutor may shirk his responsibility or make an omission by oversight. Relying on the decisions of several High Courts in *Sathyavani Ponrani v. Samuel Raj and Ors.* 2010 (2) MWN (Cr.) 273, *Shankar v. State of Karnataka and Ors.* (2013) 2 AIR Kant R 265, *Lokesh Singh v. State of Uttar Pradesh* (2013) 83 ACC 379, *Uma Saha v. State of Tripura* 2014 SCC OnLine Tri 859, *Suneel Kumar Singh v. State of Uttar Pradesh* 2019 SCC OnLine All 957, and *Khumukcham Nikita Devi v. State of Manipur* (2017) 176 AIC 839, he argued that the role of the victim's counsel should extend to putting questions to victims, raising objections to irrelevant questions put by the Public Prosecutor, and making oral arguments in addition to those made by the Public Prosecutor.

5. Per contra, learned Senior Counsel for Respondent No. 1, the State of West Bengal, emphasized that a crucial role has been envisaged for a Public Prosecutor under the scheme of the CrPC. He submitted that the Public Prosecutor is an officer of the Court and a minister of justice, as evident from the mandate placed upon him under Section 225 of the CrPC to conduct a Sessions trial. He argued that the role of such a person cannot be diluted by allowing the victim's counsel, who may be relatively inexperienced at times, to conduct the prosecution with a free hand. Further, he argued that the use of the words "under this sub section" in the proviso to Section 24(8) implies that the engagement of a victim's counsel is only with

respect to a Special Public Prosecutor, which is the subject matter of Section 24(8), and not beyond. As regards the Committee Reports mentioned supra leading to the 2009 amendment, he submitted that the replacement of the initially proposed phrase "cooperate with the prosecution" in the proviso to Section 24(8) with "assist the prosecution" indicates a deliberate intention to have a limited role for the victim's counsel. At the same time, acknowledging the reasons for ensuring greater participation of the victim in the prosecution, he submitted that the extent of the counsel's assistance should be limited and subject to the permission of the Public Prosecutor. In this regard, he relied on the decision of the Tripura High Court in *Uma Saha v. State of Tripura*, 2014 SCC OnLine Tri 859 and submitted that in instances where an issue of importance is raised by the victim's counsel, such as the Public Prosecutor failing to examine or cross-examine a witness properly, the victim's counsel can suggest some questions to the Court, which may then pose them to the witness, if deemed necessary.

6. Heard learned Senior Counsel representing both the parties.

7. In light of the arguments advanced, the main question to be considered is the extent to which a victim's counsel can participate in the prosecution of a case. Since this is closely tied with the role that is envisaged for the Public Prosecutor, we will first deal with the same.

8. In our criminal justice system, the Public Prosecutor occupies a position of great importance. Given that crimes are treated as a wrong against the society as a whole, his role in the administration of justice is crucial, as he is not just a representative of the aggrieved person, but that of the State at large. Though he is appointed by the Government, he is not a servant of the Government or the investigating agency. He is an officer of the Court and his primary duty is to assist the Court in arriving at the truth by putting forth all the relevant material on behalf of the prosecution. While discharging these duties, he must act in a manner that is fair to the Court, to the investigating agencies, as well to the accused. This means that in instances where he finds material indicating that the accused legitimately deserves a benefit during the trial, he must not conceal it. The space carved out for the Public Prosecutor is clearly that of an independent officer who secures the cause of justice and fair play in a criminal trial.

9. In light of this exposition, we find it useful to advert to certain provisions of the CrPC that highlight the role of a Public Prosecutor and the prerequisites for a person holding that office, most significant amongst which is Section 24:

"24. Public Prosecutors- (1) For every High Court, the Central Government or the State Government shall, after consultation with the High Court, appoint a Public Prosecutor and may also appoint one or more Additional Public Prosecutors, for conducting in such Court, any prosecution, appeal or other proceeding on behalf of the Central Government or State Government, as the case may be...

(7) A person shall be eligible to be appointed as a Public Prosecutor or an Additional Public Prosecutor... only if he has been in practice as an advocate for not less than seven years.

(8) The Central Government or the State Government may appoint, for the purpose of any case or class of cases, a person who has been in practice as an advocate for not less than ten years as a Special Public Prosecutor. Provided that the Court may permit the victim to engage an advocate of his choice to assist the prosecution under this sub section."

(emphasis supplied)

Other important provisions are as follows:

"225. Trial to be conducted by Public Prosecutor- In every trial before a Court of Session, the prosecution shall be conducted by a Public Prosecutor.

x x x

301. Appearance by Public Prosecutors- (1) The Public Prosecutor or Assistant Public Prosecutor in charge of a case may appear and plead without any written authority before any Court in which that case is under inquiry, trial or appeal.

(2) If in any such case any private person instructs a pleader to prosecute any person in any Court, the Public Prosecutor or Assistant Public Prosecutor in charge of the case shall conduct the prosecution, and the pleader so instructed shall act therein under the directions of the Public Prosecutor or Assistant Public

Prosecutor, and may, with the permission of the Court, submit written arguments after the evidence is closed in the case.

302. Permission to conduct prosecution- (1) Any Magistrate inquiring into or trying a case may permit the prosecution to be conducted by any person other than police officer below the rank of Inspector; but no person, other than the Advocate General or Government Advocate or a Public Prosecutor or Assistant Public Prosecutor, shall be entitled to do so without such permission...

(2) Any person conducting the prosecution may do so personally or by a pleader."

10. From a reading of these provisions, it is clear that a Public Prosecutor is entrusted with the responsibility of conducting the prosecution of a case. That this is a crucial role is evident from conditions such as in Section 24(7), which stipulates a minimum legal experience of seven years for a person to be eligible to be a Public Prosecutor. It is further clear from a joint reading of Section 301 and the proviso to Section 24(8) that the two provisions are mutually complementary. There is no bar on the victim engaging a private counsel to assist the prosecution, subject to the permission of the Court.

11. Contrary to the argument made by learned Senior Counsel for Respondent No. 1, we do not find that the use of the words "under this sub section" in the proviso to Section 24(8) implies that a victim's counsel can only be engaged to assist a Special Public Prosecutor. Such an interpretation would go against Section 301(2), which makes the pleader instructed by a private person subject to the directions of the Public Prosecutor or the Assistant Public Prosecutor. In our considered opinion, a harmonious reading should be given to these provisions to give them full effect. Furthermore, credence should be given to the overall emphasis on victimology underlying the 2009 Amendment Bill, as reflected in its Statement of Objects and Reasons:

"Statement of Objects and Reasons.- The need to amend the Code of Criminal Procedure, 1973 to ensure fair and speedy justice and to tone up the criminal justice system has been felt for quite sometime. The Law Commission has undertaken a comprehensive review of the Code of Criminal Procedure in its 154th Report and its recommendations have been found very appropriate, particularly those relating to provisions concerning... victimology...

2. ... At present victims are the worst sufferers in a crime and they don't have much role in the Court proceedings. They need to be given certain rights and compensation so that there is no distortion of the criminal justice system."

In view of this context and the provisions of the CrPC, there appears to be no justifiable basis for applying the provision only with respect to Special Public Prosecutors. Thus, we find that the assistance given by the victim's counsel is meant to be given to the prosecution in general.

12. In light of this, we now proceed to consider the extent to which such assistance can be accorded. As mentioned supra, learned Senior Counsel for the Appellant has argued that there may be instances where the Public Prosecutor may fail to perform his functions properly, whether deliberately or due to oversight, which may obstruct justice instead of furthering it. To meet the ends of justice in such cases, he submitted that the role of the victim's counsel should not be limited to filing of written arguments as provided with respect to pleaders engaged by private parties under Section 301(2). Instead, it should extend to making oral arguments and examining witnesses as well. On a perusal of the arguments advanced and the decisions relied on by both the parties, we find that such a broad mandate for the victim's counsel cannot be given effect, as it is not rooted in the text of the Cr.PC.

12.1. The use of the term "assist" in the proviso to Section 24(8) is crucial, and implies that the victim's counsel is only intended to have a secondary role qua the Public Prosecutor. This is supported by the fact that the original Amendment Bill to the CrPC had used the words "coordinate with the prosecution". However, a change was later proposed and in the finally adopted version, the words "coordinate with" were substituted by "assist". This change is reflective of an intention to only assign a supportive role to the victim's counsel, which would also be in consonance with the limited role envisaged for pleaders instructed by private persons under Section 301(2). In our considered opinion, a mandate that allows the victim's counsel to make oral arguments and cross-examine witnesses goes beyond a mere assistive role, and

constitutes a parallel prosecution proceeding by itself. Given the primacy accorded to the Public Prosecutor in conducting a trial, as evident from Section 225 and Section 301(2), permitting such a free hand would go against the scheme envisaged under the CrPC.

12.2 In some instances, such a wide array of functions may also have adverse consequences on the fairness of a trial. For instance, there may be a case where the Public Prosecutor may make a strategic call to examine some witnesses and leave out others. If the victim's counsel insists upon examining any of the left out witnesses, it is possible that the evidence so brought forth may weaken the prosecution case. If given a free hand, in some instances, the trial may even end up becoming a vindictive battle between the victim's counsel and the accused, which may further impact the safeguards put in place for the accused in criminal trials. These lapses may be aggravated by a lack of advocacy experience on the part of the victim's counsel. In contrast, such dangers would not arise in the case of a Public Prosecutor, who is required to have considerable experience in the practice of law, and act as an independent officer of the Court. Thus, it is important to appreciate why the role of a victim's counsel is made subject to the instructions of the Public Prosecutor, who occupies a prime position by virtue of the increased responsibilities shouldered by him with respect to the conduct of a criminal trial.

12.3 At the same time, the realities of criminal prosecutions, as they are conducted today, cannot be ignored. There is no denying that Public Prosecutors are often overworked. In certain places, there may be a single Public Prosecutor conducting trials in over 23 courts. Thus, the possibility of them missing out on certain aspects of the case cannot be ignored or discounted. A victimcentric approach that allows for greater participation of the victim in the conduct of the trial can go a long way in plugging such gaps. To this extent, we agree with the submission made by the learned Senior Counsel for the Appellant that the introduction of the proviso to Section 24(8) acts as a safety valve, inasmuch as the victim's counsel can make up for any oversights or deficiencies in the prosecution case. Further, to ensure that the right of appeal accorded to a victim under the proviso to Section 372 of the Cr.P.C. is not rendered meaningless due to the errors of the Public Prosecutor at the trial stage itself, we find that some significant role should be given to the victim's counsel while assisting the prosecution. However, while doing so, the balance inherent in the scheme of the CrPC should not be tampered with, and the prime role accorded to the Public Prosecutor should not be diluted.

12.4. In this regard, given that the modalities of each case are different, we find that the extent of assistance and the manner of giving it would depend on the facts and circumstances of each case. Though we cannot detail and discuss all possible scenarios that may arise during a criminal prosecution, we find that a victim's counsel should ordinarily not be given the right to make oral arguments or examine and crossexamine witnesses. As stated in Section 301(2), the private party's pleader is subject to the directions of the Public Prosecutor. In our considered opinion, the same principle should apply to the victim's counsel under the proviso to Section 24(8), as it adequately ensures that the interests of the victim are represented. If the victim's counsel feels that a certain aspect has gone unaddressed in the examination of the witnesses or the arguments advanced by the Public Prosecutor, he may route any questions or points through the Public Prosecutor himself. This would not only preserve the paramount position of the Public Prosecutor under the scheme of the CrPC, but also ensure that there is no inconsistency between the case advanced by the Public Prosecutor and the victim's counsel.

12.5 However, even if there is a situation where the Public Prosecutor fails to highlight some issue of importance despite it having been suggested by the victim's counsel, the victim's counsel may still not be given the unbridled mantle of making oral arguments or examining witnesses. This is because in such cases, he still has a recourse by channelling his questions or arguments through the Judge first. For instance, if the victim's counsel finds that the Public Prosecutor has not examined a witness properly and not incorporated his suggestions either, he may bring certain questions to the notice of the Court. If the Judge finds merit in them, he may take action accordingly by invoking his powers under Section 311 of the CrPC or Section 165 of the Indian Evidence Act, 1872. In this regard, we agree with the observations made by the Tripura High Court in *Smt. Uma Saha v. State of Tripura* (supra) that the victim's counsel has a limited right of assisting the prosecution, which may extend to suggesting questions to the Court or the prosecution, but not putting them by himself.

13. In view of the foregoing discussion, we find that the High Court was correct in dismissing the application made by the Appellant seeking permission for her counsel to crossexamine witnesses after the Public Prosecutor. However, in future, if the Sessions Judge finds that the assistance of a private counsel is necessary for the victim, he may permit it keeping in mind the observations made supra. The instant appeal is dismissed accordingly.

Appeal Dismissed

